Date of Hearing: July 6, 2011

ASSEMBLY COMMITTEE ON JOBS, ECONOMIC DEVELOPMENT AND THE ECONOMY
V. Manuel Pérez, Chair
SB 225 (Simitian) – As Amended: June 29, 2011

SENATE VOTE: 40-0

SUBJECT: California Pollution Control Financing Authority: Capital Access Loan Program

SUMMARY: Authorizes the California Pollution Control Financing Authority (CPCFA) to establish a loss reserve accounts program for the purpose of financing truck leases, through the terminal rental adjustment clause (TRAC) leasing mechanism. Specifically, this bill:

1) Authorizes the establishment of loss reserve accounts for the purpose of including the TRAC lease financing mechanism within California Capital Access Loan Program's (CalCAP) group of loss reserve account programs, which will enable the lease purchase of 2007 or newer heavy duty diesel trucks by small businesses.

2) Prohibits the use of CPCFA funds for the TRAC leasing program.

3) Authorizes the executive director to establish conditions for the TRAC leasing loss reserve accounts program.

4) Defines the term "terminal rental adjustment clause."

EXISTING LAW:

1) Establishes CalCAP for the purpose of providing a small business loss reserve accounts program through participating financial institutions.

2) Requires a loss reserve account be established for each financial institution working with CalCAP, specifies that the account is fee driven, and that all moneys in the account are the exclusive property of CPCFA.

3) Authorizes CalCAP to establish alternative provisions, as necessary, to enable CalCAP to participate in programs with other funding sources. (i.e. entering into MOUs with other state entities).

4) Requires the CPCFA to report annually to the Governor and Legislature describing the financial condition and programmatic results of CalCAP.

FISCAL EFFECT: Unknown

COMMENTS:

1) Purpose of the bill: According to the author, "SB 225 makes terminal rental adjustment clause (TRAC) leases, used by small trucking businesses, eligible for the California Capital

Access Program (CalCAP). In so doing SB 225 expands financing for upgrades that improve air quality and are required by Air Resources Board (ARB) regulations."

2) California Capital Access Program for Small Businesses: CalCAP was established by legislation enacted in 1994. The program assists small businesses in obtaining loans through participating financial institutions via a loss reserve account model, which is described in a following comment.

   The objective of the program is to incentivize financial institutions to provide small businesses with the capital to maintain and grow their business. Loans can be used to finance the acquisition of land, construction or renovation of buildings, purchase of equipment, other capital projects and working capital. While eligible, there are limitations on real estate loans and loan refinancing.

   The maximum loan amount is $2.5 million. The maximum premium lenders will pay is $100,000 (per borrower). Lenders set the terms and conditions of the loans and decide which loans to enroll into CalCAP. Loan fees, which are used to capitalize the loan reserve account, are set by the lender and are in the range of 2% to 3.5% of the total loan amount. Loans can be short- or long-term, have fixed or variable rates, be secured or unsecured, and bear any type of amortization schedule.

   Moneys to operate CalCAP originally came from excess program fees charged to applicants working with CPCFA relative to the issuance of private activity bonds. In 2010, CalCAP enrolled 943 loans to California small business owners; of those 602 were to microenterprises totaling $10.3 million. As of December 31, 2010, the total number of loans enrolled in the program since 1994 is 8,801 with cumulative loan amounts of over $1.97 billion. In 2010, CalCAP enrolled over $59 million out of approximately $62 million in loans; 44% went towards the purchase of CARB compliant trucks and retrofits. Finally, CalCAP loans crated/affected 2,045 jobs in California last year.

3) California Air Resources Board and CalCAP: In May 2009, California Air Resources Board (CARB) entered into a Memorandum of Understanding (MOU) with CalCAP to help in the financing of new or newer diesel trucks. As part of the MOU, CARB transferred to CalCAP $44.3 million to establish the Heavy Duty On-Road Truck Program. CARB agreed to contribute 20% for the first $5 million and 14% for any subsequent loan enrollments toward a participating lender's loss reserve account in order to finance the purchase of compliant heavy duty diesel trucks, diesel exhaust retrofits of 2007 vehicles or newer, and Smartway aerodynamic technologies. Eligible trucking companies have fewer than 40 trucks, fewer than 100 employees, and less than $10 million in annual revenue.

   CARB recently established stricter air quality regulations for reducing emissions of particulate matter, nitrogen oxides, and pollutants, making the CalCAP/CARB loss reserve account program even more essential. In reviewing the challenges in meeting these new regulations, CARB and the industry recognized the need to provide more flexible access to cleaner vehicles.

   AB 225 authorizes the expansion of the Heavy Duty On-Road Truck Program to include financing of TRAC leases using the loan loss reserve account model. This new leasing authority is exclusive to the CARB diesel truck program and does not apply to CalCAP's other financing programs. With additional financing via TRAC leases, CARB and CalCAP will be able to provide financial assistance to fleet truckers who must comply with the new lower emissions standards but lack the resources to purchase a new truck outright. The public will also benefit by helping to remove older polluting trucks of the road by January 1, 2012.

4) Terminal Rental Adjustment Clause Leases: TRAC leases, widely used within the trucking industry, combine the advantages of leasing while retaining the option to purchase the leased equipment at the end of the term. In this type of lease, the purchase price for the equipment is set at the beginning of the lease, allowing for flexibility in the monthly payment depending on whether the trucker wants a higher monthly payment with a lower payout amount or a lower monthly payment with a larger payout amount. At the end of the lease the lessee is given the option to purchase the vehicle or submit it for sale. If the vehicle is sold above the agreed price, the lessee is compensated, whereas if it is below the agreed upon price the lessor is compensated.

   This bill states that that CalCAP must not contribute any funds into the TRAC loss reserve account. The Committee may wish to clarify the type of funding to be excluded from the TRAC lease model, such as any federal funding not specifically earmarked for CARBs heavy duty truck program.

5) CalCAP loss reserve account: Under the original loan reserve account model established in 1994, CalCAP enrolls financial institutions into the program and agrees to match loss reserve account premiums (fees) paid by borrowers and lenders on eligible loans. As an example, if the lender and the borrower each contribute an amount equal to 2% of the loan amount, CalCAP would contribute 4% into the loan reserve account. For eligible loans in "severely affected areas," CalCAP would contribute an additional 50%, making CalCAP's total contribution to the loss reserve account 150% of the lender's contribution.

   In 2008, CPCFA determined it could not sustain the program at the original contribution levels which required CalCAP to match the contributions of both the lender and borrower. Legislation was enacted that reduced the minimum CalCAP contribution to an amount equal to the lender contribution. Thus, each of the three entities (CalCAP, lender and borrower) would contribute between 2% and 3.5% to the loss reserve account. The language in the 2008 bill allowed CalCAP to make a higher contribution rate if CPCFA chose to do so. However, for severely affected communities, the CalCAP contribution remained at 150% of the amount of the lender contribution. AB 891 (Hueso), passed by this committee in May, 2011, proposes to increase the state's commitment back to its historical high for severely affected communities.

6) California Small Business: California's dominance in many economic areas is based, in part, on the significant role small businesses play in the state's $1.9 trillion economy. Businesses with less than 100 employees comprise nearly 98% of all businesses, and are responsible for employing more than 37% of all workers in the state.

   Small- and medium-sized businesses are crucial to the state's international competitiveness and are an important means for dispersing the positive economic impacts of trade within the California economy. Of the over 57,461 companies that exported goods from California in 2008, 96% were small- and medium-sized enterprises (SME) with fewer than 500 employees.

These SMEs generated nearly two-fifths (44%) of California's exports in 2008. Nationally, SMEs represented only 31% of total exports. These numbers include the export of goods only and not services.

Small businesses function as economic engines, especially in challenging economic times. During the nation's economic downturn from 1999 to 2003, microenterprises (businesses with less than five employees) created 318,183 new jobs or 77% of all employment growth, while larger businesses with more than 50 employees lost over 444,000 jobs. From 2000 to 2001, microenterprises created 62,731 jobs in the state, accounting for nearly 64% of all new employment growth. According to a 2010 report from the California Senate Office of Research, in 2008 microenterprises employed four million people or 19% of the state's employment. Common types of microenterprises include engineering, computer system design, housekeeping, construction, landscaping, and personnel services.

7) Related Legislation: Below is a list of related legislation from the current legislative session:

a) AB 796 (Blumenfield) California Alternative Energy and Advanced Transportation Act: This bill increases the maximum allowable loan size in the CalCAP program to $5 million, from $2.5 million. The bill also requires that the increased loan loss reserve amount be entirely funded through new federal funds and establishes the “Clean Energy and Jobs Incentive Program" to provide loan loss reserves as financial assistance to a participating financial institution providing loans to California-based entities for the development and expansion of manufacturing facilities or the installation of “clean energy” facilities. Under this program, CAEATA would provide a backstop for bank loans made to eligible California clean technology projects. Status: Pending in Senate Appropriations Committee in August 2011.

b) AB 901 (V. Manuel Pérez) Implementation of Small Business Jobs Act: This bill codifies the Small Business Development Centers and expands the definition of eligible financial institution for participation under the California Capital Access Loan Program (CalCAP), a program receiving $90 million dollars in federal and state funding for small business assistance. Status: Pending in Senate Government and Finance in July 2011.

c) 981 (Hueso) California Pollution Control Financing Authority: CalCAP: This bill requires the CPCFA to contribute a minimum of 150% of the fees paid by participating financial institutions, if the qualified business is located within a severely affected community. The bill would also authorize the use of a portion of the interest or other income that has been credited to a loss reserve account from a participating financial institution. Status: Pending in Senate Appropriations Committee in July 2011.

REGISTERED SUPPORT / OPPOSITION:

Support

California State Treasurer
California Trucking Association
Clean Fleets Coalition
Peña's Disposal, Inc.
South Tulare – Richgrove Refuse, Inc.

Westside Waste Management Co., Inc.

Opposition

None on file

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